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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,165	10/01/2004	Frank J Viola	2787 (203-3103)	6649
Covidien 60 Middletown Avenue North Haven, CT 06473			EXAMINER WOO, JULLAN W	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 08/19/2010	DELIVERY MODE PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/510,165
Filing Date: October 01, 2004
Appellant(s): VIOLA, FRANK J

Francesco Sardone
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 3, 2010 appealing from the Office action mailed December 31, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 31-64

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant's statement of the grounds of rejection to be reviewed on appeal is defective with respect to the grounds recited in paragraphs VI (D) and VI (F). That is, with respect to paragraph VI (D), U.S. Patent No. 4,452,106 to Tartaglia was applied to the rejection of claims 31, 33, 39, and 40, not U.S. Patent No. 4,318,313 as cited in this

paragraph. With respect to paragraph VI (F), U.S. Patent No. 4,318,313 to Tartaglia was not recited as the patent applied in the rejection of claims 52-54.

Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

3,140,715	WHITTON, JR. et al.	7-1964
3,363,628	WOOD	1-1968
3,653,389	SHANNON	4-1972
4,318,313	TARTAGLIA; hereafter Tartaglia '313	3-1982
4,452,106	TARTAGLIA; hereafter Tartaglia '106	6-1984
6,066,174	FARRIS	5-2000
6,319,257	CARIGNAN et al.	11-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 31-37, 41, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon (3,653,389) in view of Wood (3,363,628), and further in view of Tartaglia (4,452,106). Shannon discloses the invention substantially as claimed. Shannon discloses, at least in the figures, a surgical apparatus including a handle portion (2 and 3 combined) including a moveable handle (3) and a stationary hand grip (2), an elongated body portion (4), and a jaw blade (5 and 6 combined) operably connected to the handle portion for selective closure (from fully open to fully closed and vice versa) upon an actuation of the moveable handle and including a first leg (5) and a second leg (5), each leg having a jaw (at 6) integrally connected thereto, and extending distally therefrom, the jaws defining a plurality of laterally-oriented channels and being configured to receive a surgical clip disposed therebetween; and first and second interleg engaging members (8, 9) extending from one of the first and second legs, where when the interleg engaging member are engaged with the others of the first and second legs, a vertical displacement in a first direction of one of the first and second leg causes a first corresponding displacement in the first direction of the other of the first and second legs, and such that a vertical displacement in a second direction, opposite the first direction, of the one of the first and second legs causes a second corresponding displacement in the second direction of the other of the first and second legs, where the first and second interleg engaging members respectively comprise a first arm (8 or 9)

having a tongue and a second arm (8 or 9) having a tongue, where the first and second legs each include an inner surface (at 7) and a recess (10) in an upper portion of the inner surface and engageable with a tongue, where the first arm closely overlies and is engageable the recess in the second leg and the second arm closely underlies and is engageable with the second leg, where a portion of the tongue of the first arm closely overlies the recess in a second upper surface of the second leg and a portion of the tongue of the second arm closely underlies the recess in a first lower surface of the first leg, where each of the first and second legs includes a neck (proximal of element 6) adjacent the jaw, where one inter-leg engaging member extends from the neck of the first leg and another extends from the neck of the second leg, and where each jaw is oriented at an angle with respect to a plane defined by the first and second leg (i.e., each jaw includes an angled, exterior surface that is angled with respect to a plane along the longitudinal axis of the apparatus and defined by a plane of the first and second leg or each jaw is perpendicular to a lateral surface of the each leg). However, Shannon does not disclose that each jaw defines a channel oriented substantially along a respective longitudinal axis thereof, where the apparatus is applicable for clip applying. Nevertheless, Shannon discloses, in col. 1, lines 51-62, that the jaw blade may be modified in "various forms...as may be best suited to the conditions of a particular use," and Wood teaches a modification of jaws for use in clip application to blood vessels and other fluid ducts. Wood teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) each defining a channel oriented substantially along a respective longitudinal axis thereof. It would have been obvious to

one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of Shannon's device, so that the channel(s) are oriented substantially along a longitudinal axis of each of the jaws. Such an orientation of a channel would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Also, Shannon in view of Wood does not disclose that the distal end of each inter-leg engaging member is at all times at least partially engaged with the other of the first and second legs. Tartaglia '106 teaches, at least in figure 9 and col. 4, lines 23-36; inter-leg engaging members (40) of an apparatus that are at all times at least partially engaged with each other. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Tartaglia '106, to modify the inter-leg engaging members of Shannon in view of Wood, so that the distal ends are at all times at least partially engaged with each other. Such a modification would prevent, at all times, undesirable lateral flexing of the legs and/or jaws.

Claims 45-50, 52, and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon (3,653,389) in view of Farris (6,066,174), and further in view of Wood (3,363,628). Shannon discloses the inventions substantially as claimed. Shannon discloses, at least in the figures, a surgical apparatus including a handle portion (2 and 3 combined) including a moveable handle (3) and a jaw blade (5 and 6 combined) operably connected to the handle portion for selective closure (from fully open to fully closed and vice versa) upon an actuation of the moveable handle and including a first leg (5) and a second leg (5), each leg having a jaw (at 6) integrally

connected thereto, and extending distally therefrom, the jaws defining a plurality of laterally-oriented channels and being configured to receive a surgical clip disposed therebetween; and first and second inter-leg engaging members (8, 9) extending from one of the first and second legs, where when the interleg engaging member are engaged with the others of the first and second legs, a vertical displacement in a first direction of one of the first and second leg causes a first corresponding displacement in the first direction of the other of the first and second legs, and such that a vertical displacement in a second direction, opposite the first direction, of the one of the first and second legs causes a second corresponding displacement in the second direction of the other of the first and second legs, where the first and second interleg engaging members respectively comprise a first arm (8 or 9) having a tongue and a second arm (8 or 9) having a tongue, where the first and second legs each include an inner surface (at 7) and a recess (10) in an upper portion of the inner surface and engageable with a tongue, where the first arm closely overlies and is engageable the recess in the second leg and the second arm closely underlies and is engageable with the second leg, where a portion of the tongue of the first arm closely overlies the recess in a second upper surface of the second leg and a portion of the tongue of the second arm closely underlies the recess in a first lower surface of the first leg, where each of the first and second legs includes a neck (proximal of element 6) adjacent the jaw, where one inter-leg engaging member extends from the neck of the first leg and another extends from the neck of the second leg. However, Shannon does not disclose an elongated body portion rotatably mounted to and extending from the handle portion or a body portion

extending from the handle portion and including a rotating collar for rotating the body portion relative to the handle portion. Farris teaches, at least in figures 7-11 and col. 10, line 3 to col. 11, line 35; an apparatus for applying an implant in a patient's body, where the apparatus includes, inter alia, a handle portion including a moveable handle (55--moveable relative to element 52 or 51--moveable relative to element 160), a jaw blade (58), and an elongated body portion (160) rotatably mounted to and extending from the handle portion or a body portion (160) extending from the handle portion and including a rotating collar (knurled portion of 160) for rotating the body portion relative to the handle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Farris, to modify the apparatus of Shannon, so that it includes a body portion as claimed. Such a modification would allow the apparatus to be used in a minimally-invasive procedure for the secure grasping of an implant during insertion of the implant in a patient's body, where the body portion would also allow actuation of a jaw blade at a surgical site within patient's body.

However, neither Shannon nor Shannon in view of Farris disclose that each jaw defines a channel oriented substantially along a respective longitudinal axis thereof, where the apparatus is applicable for an implant that is clip. Nevertheless, Shannon discloses, in col. 1, lines 51-62, that the jaw blade may be modified in "various forms...as may be best suited to the conditions of a particular use." Wood further teaches a modification of jaws for use in clip application to blood vessels and other fluid ducts. Wood teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) each defining a channel oriented substantially along a

respective longitudinal axis thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of the device of Shannon or Shannon in view of Farris, so that the channel(s) are oriented substantially along a longitudinal axis of each of the jaws. Such an orientation of a channel would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Claims 31, 38, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitton, Jr. et al. (3,140,715) in view of Wood (3,363,628), and further in view of Tartaglia (4,452,106). Whitton, Jr. et al. disclose the invention substantially as claimed. Whitton, Jr. et al. disclose a surgical apparatus including a handle portion (13 and proximal portions of 11 and 12 combined) including a movable handle (proximal, inclined portions of 11 and 12) and a stationary hand grip (13), an elongated body portion (elements 16), a jaw blade extending from the elongated body portion and operably connected to the handle portion for selective closure (from fully open to fully closed and vice versa) upon an actuation of the moveable handle and including a first leg (distal portion of 11) and a second leg (distal portion of 12), each leg having a jaw (14, 15) integrally connected thereto, and extending distally therefrom, the jaws defining channels (at 17 or 17') and being configured to receive a surgical clip disposed therebetween; and at least one inter-leg engaging members (20 or 22) extending from one of the first and second legs, where the first leg includes a first arm (21) with a pair of transversely spaced apart tongues (22) where the second leg includes upper and lower surfaces (sides of 11) with respective upper and lower

recesses (surfaces of 16 recessed with respect to sides of 11) engageable with the tongues, and where each jaw is oriented at an angle with respect to a plane defined by the first and second leg (i.e., each jaw includes an angled, exterior surface that is angled with respect to a plane along the longitudinal axis of the apparatus and defined by a plane of the first and second leg or each jaw is perpendicular to a lateral surface of each leg). However, Whitton, Jr. et al. do not disclose that each jaw defines a channel oriented substantially along a respective longitudinal axis thereof, where the apparatus is applicable for clip applying. Wood teaches a modification of jaw channels for use in clip application to blood vessels and other fluid ducts. Wood teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) each defining a channel oriented substantially along a respective longitudinal axis thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of the device of Whitton, Jr. et al., so that the channel(s) are oriented substantially along a longitudinal axis of each of the jaws. Such an orientation of a channel would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Also, Whitton, Jr. et al. in view of Wood do not disclose that the distal end of each inter-leg engaging member is at all times at least partially engaged with the other of the first and second legs. Tartaglia '106 teaches, at least in figure 9 and col. 4, lines 23-36; inter-leg engaging members (40) of an apparatus that are at all times at least partially engaged with each other. It would have been obvious to one having ordinary

skill in the art at the time the invention was made, in view of Tartaglia '106, to modify the inter-leg engaging members of Whitton, Jr. et al. in view of Wood, so that the distal ends are at all times at least partially engaged with each other. Such a modification would prevent, at all times, undesirable lateral flexing of the legs and/or jaws.

Claims 31, 33, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tartaglia (4,452,106) in view of Wood (3,363,628). Tartaglia '106 discloses the invention substantially as claimed. Tartaglia '106 discloses, at least in figures 1-9, a surgical apparatus including a handle portion (12) including a movable handle (14 or 16) and a stationary hand grip (at 18), an elongated body portion (42, 42'), and a jaw blade (28 and 30) including a first leg (28) and a second leg (30), each leg having a jaw (34 or 34') integrally connected thereto, and extending distally therefrom, the jaws defining channels (at 36 or 36') and being configured to receive a surgical clip disposed therebetween; and at least one or two inter-leg engaging members (40) extending from the first and second legs, where the jaw blade is assembled in a surgical clip applier (11); wherein when the jaws are in an open position, a portion of the inter-leg engaging member closely overlies and is slidingly engageable with a portion of the other of the first and second legs, where an inter-leg member effects engagement with a first leg or second leg when the jaws are in an opened or closed position, where each jaw is oriented at an angle with respect to a plane defined by the first and second leg (i.e., each jaw includes an angled, exterior surface that is angled with respect to a plane along the longitudinal axis of the apparatus and defined by a plane of the first and second leg or each jaw is perpendicular to a lateral surface of each leg), and where

distal ends of each inter-leg engaging member is at all times at least partially engaged with the other of the first and second legs. However, Tartaglia '106 does not disclose that each jaw defines a channel oriented substantially along a respective longitudinal axis thereof, where the apparatus is applicable for clip applying. Wood teaches a modification of jaw channels for use in clip application to blood vessels and other fluid ducts. Wood teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) each defining a channel oriented substantially along a respective longitudinal axis thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of Tartaglia '106's device, so that the channel(s) are oriented substantially along a longitudinal axis of each of the jaws. Such an orientation of a channel would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Claims 45, 47, 51, 56, 57, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitton, Jr. et al. (3,140,715) in view of Farris (6,066,174), and further in view of Wood (3,363,628). Whitton, Jr. et al. disclose the invention substantially as claimed. Whitton, Jr. et al. disclose an apparatus including, inter alia, a handle portion (13 and proximal portions of 11 and 12 combined) and a jaw blade as claimed. However, Whitton, Jr. et al. do not disclose an elongated body portion rotatably mounted to and extending from the handle portion. Farris teaches, at least in figures 7-11 and col. 10, line 3 to col. 11, line 35; an apparatus for applying an implant in a patient's body, where the apparatus includes, inter alia, a handle portion including a

moveable handle (55--moveable relative to element 52 or 51--moveable relative to element 160), a jaw blade (58), and an elongated body portion (160) rotatably mounted to and extending from the handle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Farris, to modify the apparatus of Whitton, Jr. et al., so that it includes a body portion as claimed. Such a modification would allow the apparatus to be used in a minimally-invasive procedure for the secure grasping of an implant during insertion of the implant in a patient's body, where the body portion would also allow actuation of a jaw blade at a surgical site within patient's body.

However, neither Whitton, Jr. et al. nor Whitton, Jr. et al. in view of Farris disclose that the apparatus is applicable for an implant that is clip. Wood further teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) for use in clip application to blood vessels and other fluid ducts. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of the device of Whitton, Jr. et al. or Whitton, Jr. et al. in view of Farris, so that the apparatus would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Claims 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tartaglia (4,318,313) in view of Farris (6,066,174), and further in view of Wood (3,363,628). Tartaglia '313 discloses the invention substantially as claimed. Tartaglia '313 discloses a surgical apparatus including a handle portion (12 and 16 and 16'

combined) and a jaw blade, but does not disclose a body portion including rotating collar for rotating the body portion relative to the handle portion. Farris teaches, at least in figures 7-11 and col. 10, line 3 to col. 11, line 35; an apparatus for applying an implant in a patient's body, where the apparatus includes, inter alia, a handle portion including a moveable handle (55--moveable relative to element 52 or 51--moveable relative to element 160), a jaw blade (58), and a body portion (160) including rotating collar for rotating the body portion relative to the handle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Farris, to modify the apparatus of Tartaglia '313, so that it includes a body portion as claimed. Such a modification would allow the apparatus to be used in a minimally-invasive procedure for the secure grasping of an implant during insertion of the implant in a patient's body, where the body portion would also allow actuation of a jaw blade at a surgical site within patient's body.

However, neither Tartaglia '313 nor Tartaglia '313 in view of Farris disclose that the apparatus is applicable for an implant that is clip. Wood further teaches, at least in figures 2 and 3 and in col. 3, lines 51-55 and col. 4, lines 7-30; jaws (19, 20) for use in clip application to blood vessels and other fluid ducts. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Wood, to modify the jaws of the device of Tartaglia '313 or Tartaglia '313 in view of Farris, so that the apparatus would allow the firm gripping, orientation, and clamping of at least one surgical clip onto a blood vessel or other fluid duct within the narrow confines of surgical site.

Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable Wood (3,363,628) in view of Shannon (3,653,389), and further in view of Farris (6,066,174). Wood discloses the invention substantially as claimed. Wood discloses, at least in figures 3, 8, and 9 and in col. 1, lines 13-65 and col. 3, lines 51 to col. 4, line 6; a method for applying surgical clips and performing blunt dissection of tissue, where the method includes providing a surgical clip applier (19, 20) for applying surgical clips, performing a blunt dissection technique utilizing the jaws of the clip applier (i.e., inherent dissection of tissue surrounding a blood vessel or other fluid duct by insertion of the clip applier into a patient and by application of the clip with the jaws), and applying a surgical clip (25) to a tissue or vascular target area (e.g., 36) utilizing the clip applier, where the jaws each define a channel oriented substantially along a respective longitudinal axis thereof and are configured to receive the surgical clip. However, Wood does not disclose that the method includes a surgical clip applier including a handle portion including a moveable handle, an elongated body portion, and first and second legs and at least one inter-leg engaging member extending between the legs and effecting an engagement between the first and second legs, such that vertical displacement in a first direction of one of the first and second legs causes a first corresponding displacement in the first direction of the other of the first and second legs, and such that a vertical displacement in a second direction, opposite the first direction, of one of the first and second legs causes a second corresponding displacement in the second direction of the other of the first and second legs, and where the jaw blade is supported on a distal end of the elongated body and is selectively

closed upon actuation of the moveable handle. Shannon teaches, at least in the figures and in col. 1, lines 39-50, a forceps usable for the application of the clip of Wood's method, where the forceps includes a handle portion (2 and 3 combined) with a moveable handle (3), a jaw blade (5 and 6 combined) with first and second legs that are selectively closed upon actuation of the moveable handle, jaws (at 6), and inter-leg engaging members (8, 9) as claimed. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Shannon, to modify the clip applier of Woods, so that it includes a handle portion, an elongated body portion, first and second legs and inter-leg engaging members as claimed. Such a clip applier would allow application of a surgical clip to a tissue, while allowing alignment of the jaws with respect to each other and preventing undue rocking motion of the jaws as the clip is manipulated with the applicator.

However, neither Wood nor Wood in view of Shannon discloses an apparatus with an elongated body portion rotatably mounted to and extending from the handle portion. Farris teaches, at least in figures 7-11 and col. 10, line 3 to col. 11, line 35; an apparatus for applying an implant in a patient's body, where the apparatus includes, inter alia, a handle portion including a moveable handle (55--moveable relative to element 52 or 51--moveable relative to element 160), a jaw blade (58), and an elongated body portion (160) rotatably mounted to and extending from the handle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Farris, to modify the apparatus of Wood or Wood in view of Shannon, so that it includes a body portion as claimed. Such a modification would

allow the apparatus to be used in a minimally-invasive procedure for the secure grasping of an implant during insertion of the implant in a patient's body, where the body portion would also allow actuation of a jaw blade at a surgical site within patient's body.

Claims 61, 62, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shannon (3,653,389) in view of Farris (6,066,174) and Wood (3,363,628), and further in view of Carignan et al. (6,319,257). Shannon in view of Farris and Wood disclose the invention substantially as claimed, but do not disclose rotation of the elongated body relative to the handle portion causes rotation of the jaw blade. Carignan et al. teach, in figures 6, 9 and 10 and col. 1, lines 47-51; an apparatus where rotation of an elongated body (16) relative to a handle portion (46) causes rotation of jaw blades (34). It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Carignan et al., to modify the elongated body and handle portion of Shannon in view of Farris and Wood, so that rotation of the elongated body relative to the handle portion causes rotation of the jaw blades. Such a modification would allow the grasping or release of objects with precise pressure and allow actuation of the jaw blades at the proximal end of the apparatus.

Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wood (3,363,628) in view of Shannon (3,653,389) and Farris (6,066,174), and further in view of Carignan et al. (6,319,257). Wood in view of Shannon and Farris discloses the invention substantially as claimed, but does not disclose that rotation of the elongated body relative to the handle portion causes rotation of the jaw blade. Carignan et al. teach, in figures 6, 9 and 10 and col. 1, lines 47-51; an apparatus where rotation of an

elongated body (16) relative to a handle portion (46) causes rotation of jaw blades (34). It would have been obvious to one having ordinary skill in the art at the time the invention was made, in view of Caringnan et al., to modify the elongated body and handle portion of Wood in view of Shannon and Farris, so that rotation of the elongated body relative to the handle portion causes rotation of the jaw blades. Such a modification would allow the grasping or release of objects with precise pressure and allow actuation of the jaw blades at the proximal end of the apparatus.

(10) Response to Argument

With respect to Appellant's allegation in paragraph VII (A), page 12 of the brief, that Shannon's connecting section 2 and hinge section 3 do not form a handle portion having a moveable handle and a stationary grip: The Appellant is incorrect. Connecting section 2 and hinge section 3 indeed are capable of being manually grasped, and hinge section 3 is indeed moveable with respect to a stationary connecting section 2 to effect closure of the jaw blades as claim 31 requires. Appellant's arguments regarding Shannon's straight section 5 being the location for normal engagement of the forceps are directed to the intended use of the straight section rather than to structural differences between the invention and Shannon's device. In short, Shannon's connecting section 2 and hinge section 3 (not portions of the devices of Wood and Tartaglia '106) indeed form, as claimed, the handle portion having a moveable handle and a stationary grip.

With respect to Appellant's allegation in paragraph VII (B), page 17 of the brief, that it would not be obvious to modify the forceps of Shannon to include the slidable

sleeve of Farris: The Appellant is incorrect. Farris's device is a tweezer-like forceps with moveable jaw blades 55 that are analogous to the jaw blades of Shannon's forceps. However, Farris teaches an elongated body or a slidable sleeve that effects closure of the jaw blades. Thus, as pointed out in the rejection, it would be obvious to one having ordinary skill in the art, in view of Farris, to modify the forceps of Shannon, including, inter alia, inclined section 4, so that a slidable sleeve is applied for jaw blade movement (and the forceps remain operable). Essentially, actuation of the forceps in Farris with a slidable sleeve is analogous to the manual actuation of the forceps of Shannon. However, the slidable sleeve, as taught by Farris, advantageously allows a user to operate forceps in a minimally-invasive surgical environment.

With respect to Appellant's allegation in paragraph VII (C), page 19 of the brief, that Whitton, Jr.'s connecting portion 13 and proximal portions of arms 11 and 12 do not form a handle portion having a moveable handle and a stationary grip: The Appellant is incorrect. Connecting portion 13 and portions of arms 11 and 12 indeed are capable of being manually grasped, and portions of arms 11 and 12 are indeed moveable with respect to stationary connecting portion 13 to effect closure of the jaw blades as claim 31 requires. Appellant's arguments regarding the middle portions of arms 11 and 12 as the locations for actuation of the forceps are directed to the intended use of the middle portions rather than to structural differences between the invention and Whitton, Jr.'s device. In short, Whitton, Jr.'s connecting portion 13 and proximal portions of arms 11 and 12 (not portions of the devices of Wood and Tartaglia '106) indeed form, as claimed, the handle portion having a moveable handle and a stationary grip.

With respect to Appellant's allegations in paragraph VII (D), page 22 of the brief, that Tartaglia does not disclose a device with a moveable handle and a stationary grip: The Appellant is incorrect. First, Appellant apparently argued against the disclosure of Tartaglia '313 rather than Tartaglia '106, which was applied in the rejection. It is Tartaglia '106 that discloses a device with the handle portion as claimed. Tartaglia 106 indeed discloses a movable handle (14 or 16) and a stationary hand grip (at 18), where the moveable handle and stationary hand grip are indeed capable of being manually grasped, and movable handle 14 or 16 is indeed moveable with respect to a stationary connecting section (at 18) to effect closure of the jaw blades as claim 31 requires. Appellant's arguments regarding Tartaglia's mid-portions of the arms being the locations for normal engagement of the forceps are directed to the intended use of the mid-portions rather than to structural differences between the invention and Tartaglia's device. In short, Tartaglia '106's moveable handle and connecting section (not portions of Wood's device) indeed form, as claimed, the handle portion having a moveable handle and a stationary grip.

With respect to Appellant's allegations in paragraph VII (D), page 23 of the brief, that Tartaglia does not disclose a device with first and second legs, each leg having a jaw integrally connected thereto and extending distally therefrom, each jaw defining a channel oriented substantially along a respective longitudinal axis thereof, wherein each jaw is oriented at an angle with respect to a plane defined by the first and second legs: The Appellant is incorrect. It is Tartaglia '106, not Tartaglia '313, which discloses a device including, inter alia, a jaw blade (28 and 30) including a first leg (28) and a

second leg (30), each leg having a jaw (34 or 34') integrally connected thereto, and extending distally therefrom, the jaws defining channels (at 36 or 36') and being configured to receive a surgical clip disposed therebetween; where each jaw is oriented at an angle with respect to a plane defined by the first and second leg (i.e., each jaw includes an angled, exterior surface that is angled with respect to a plane along the longitudinal axis of the apparatus and defined by a plane of the first and second leg or each jaw is perpendicular to a lateral surface of each leg).

With respect to Appellant's allegation in paragraph VII (E), page 25 of the brief, that it would not be obvious to modify the forceps of Whitton, Jr. to include the slidable sleeve of Farris: The Appellant is incorrect. Farris's device is a tweezer-like forceps with moveable jaw blades 55 that are analogous to the jaw blades of Whitton, Jr.'s forceps. However, Farris teaches an elongated body or a slidable sleeve that effects closure of the jaw blades. Thus, as pointed out in the rejection, it would be obvious to one having ordinary skill in the art, in view of Farris, to modify the forceps of Whitton, Jr., including, inter alia, arms 11 and 12, so that a slidable sleeve is applied for jaw blade movement (and the forceps remain operable). Essentially, actuation of the forceps in Farris with a slidable sleeve is analogous to the manual actuation of the forceps of Whitton, Jr. However, the slidable sleeve, as taught by Farris, advantageously allows a user to operate forceps in a minimally-invasive surgical environment.

With respect to Appellant's allegation in paragraph VII (F), page 28 of the brief, that it would not be obvious to modify the forceps of Tartaglia '313 to include the

slidable sleeve of Farris: The Appellant is incorrect. Farris's device is a tweezer-like forceps with moveable jaw blades 55 that are analogous to the jaw blades of Tartaglia '313's forceps. However, Farris teaches an elongated body or a slidable sleeve that effects closure of the jaw blades. Thus, as pointed out in the rejection, it would be obvious to one having ordinary skill in the art, in view of Farris, to modify the forceps of Tartaglia '313, including, inter alia, arms 10 and 10', so that a slidable sleeve is applied for jaw blade movement (and the forceps remain operable). Essentially, actuation of the forceps in Farris with a slidable sleeve is analogous to the manual actuation of the forceps of Tartaglia '313. However, the slidable sleeve, as taught by Farris, advantageously allows a user to operate forceps in a minimally-invasive surgical environment.

With respect to Appellant's allegation in paragraph VII (G), page 29; paragraph VII (H), pages 30 and 31; and paragraph VII (I), pages 31 and 32, of the brief, that Wood, Shannon, or Farris, alone or in combination, do not teach or disclose a clip applier including, inter alia, an elongated body portion and handle portion, as claimed: The Appellant is incorrect. As shown in the rejection and responses above, Wood discloses a clip applier, while Shannon and Farris teach the handle and elongated body portions. Moreover, Wood, Shannon, and Farris are within the same or analogous art of forceps. And based on the knowledge gleaned from these references, the references were combined under 35 U.S.C. 103(a) to arrive at the invention of claim 55.

With respect to Appellant's allegation in paragraph VII (H), page 31 of the brief, that Carignan does not disclose rotation of an elongated body relative to the handle

portion causes rotation of the jaw blades: The Appellant is incorrect. First, however, the Examiner agrees with the Appellant in the statement that rotation of Carignan's sleeve 16 relative to handle 14 effects opening and closing of jaws 34. However, the Examiner posits that the opening and closing of the jaws 34 entails rotation of the jaws. That is, the jaws rotate about a central axis passing through hole 38 as seen in figure 3 of Carignan. Thus, Carignan cures the deficiencies of the Shannon, Farris, and Wood with respect to the limitation regarding rotation of the elongated body relative to the handle portion.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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